IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

OP.No. 8250 of 2000(F)

PETITIONER:

BIJI.S., W/O.SREEKUMAR,
AGED 27,
THEKKUKALLUNGAL HOUSE,
MEZHUVELI.P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOHNSON MANAYANI

RESPONDENTS:
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1. THE MANAGER,
S.N.TRUST SCHOOLS, KOLLAM.

2. PRINCIPAL, PADMANABHODAYAM H.S.S.,
MEZHUVELI, PATHANAMTHITTA DISTRICT.

3. HEADMISTRESS, S.N.G.H.S.S.,
CHEMPAZHANTHI, TRIVANDRUM.

4. DISTRICT EDUCATIONAL OFFICER,
TRIVANDRUM.

5. DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA.

6. STATE OF KERALA, REP. BY ITS SECRETARY,
GENERAL EDUCATION (A) DEPARTMENT,
TRIVANDRUM.

BY ADV. SRI.A.N.RAJAN BABU
BY GOVERNMENT PLEADER SMT.M.R.SREELATHA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD

ON 19/09/2007, THE COURT ON 19/09/2007 DELIVERED THE

FOLLOWING:

APPENDIX
(WP(C) NO.7375 OF 2006)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the order of appointment issued by R1 dtd.24.6.98.

Ext.P2: Copy of the judgment in OP 2519 of 1999 dtd.16.7.99.

Ext.P3: Copy of the petition filed by the petitioner before R6 dtd.28.6.99.

Ext.P4: Copy of the order issued by R2 to the petitioner dtd.16.8.99.

Ext.P5: Copy of the judgment in OP 26015/1999 dtd.7.10.99.

Ext.P6: Copy of the order of R6 dtd.1.1.2000.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 8250 OF 2000 - F

Dated this the 19th day of September, 2007

J U D G M E N T

Under the educational agency of S.N.Trust, there were two schools, the Padmanabhodayam H.S.S., Mezhuveli and the S.N.G.H.S.S., Chempazhanthi. The petitioner was originally appointed as a Mathematics Teacher in the Chempazhanthi School on 24.6.1998. The same was not approved because of a litigation pending initiated by the teacher, who was transferred from Chempazhanthi School to Mezhuveli School, in which vacancy the petitioner was appointed. Ultimately, by Ext.P2 judgment, the transfer of the teacher above named was cancelled and it was held that she was entitled to be retained at Chempazhanthi School. In that judgment, the petitioner was the seventh respondent. There was a direction in that judgment to permit the petitioner to join duty in the Mezhuveli School. Accordingly, the petitioner joined Mezhuveli

School pursuant to Ext.P4 order dated 16.8.1999. Now, the petitioner's claim is that the petitioner is entitled to have her appointment approved with effect from 24.6.1998 and salary paid for the period from 24.6.1998 to 15.8.1999 also. According to the petitioner, going by Ext.P2 judgment, her appointment was not found to be illegal by this Court, but only a readjustment of the vacancies was directed to be made. Therefore, she is entitled to get her salary from the initial appointment onwards is the submission made. The petitioner therefore seeks the following reliefs:-

> "i. issue a writ of certiorari or any other appropriate writs, directions or orders, quashing Ext.P6 order passed by respondent No.6;
> ii. issue a writ of mandamus or any other appropriate writs, directions or orders commanding respondents 4 to 6 to approve and disburse the salary due to the petitioner as per Ext.P1 appointment order;
> iii. issue such other orders as are deemed fit and proper in the circumstances of the case."

2. The learned Government Pleader opposes the prayer. According to the Government Pleader, the petitioner was appointed in the Chempazhanthi School by Ext.P1 order in the vacancy of a teacher who was transferred from Chempazhanthi School to Mezhuveli School. That transfer was found to be unsustainable. That appointment also was never approved. That being so, there never was any vacancy in the Chempazhanthy School to accommodate the petitioner. Therefore, if salary and allowances are paid to the petitioner for the period she worked in Chempazhanthi School, there would be duplication of payment of salary and allowances since salary and allowances have already been paid to the teacher who was validly occupying the post.

3. The petitioner heavily relies on Ext.P2 judgment particularly paragraphs 4 and 5 of the judgment. According to the petitioner, this Court never held that the petitioner's appointment was wrong. There was a vacancy in Mezhuveli School to which only the

teacher in whose place the petitioner was appointed was transferred. Even though that transfer was set aside, there were vacancies in two schools to accommodate both and therefore, salary should be paid to the petitioner.

4. I have considered the contentions in detail. Whether there was a vacancy in Mezhuveli School or not, it remains a fact that the petitioner never worked in Mezhuveli school until she validly joined there pursuant to Ext.P4 dated 16.8.1999. The petitioner has no case that the petitioner worked in Mezhuveli School till 16.8.1999. That being so, the appointment of the petitioner in the Chempazhanthi School was in a non-existent vacancy and even if she worked there, that would not make any difference because there was no vacancy to accommodate her at Chempuzhanthi School. That being so, no salary and allowances can be validly paid to the petitioner. Moreover, I note that in Ext.P2 judgment, there was another person whose transfer was also in question and this court had specifically directed

payment of salary and allowances to that person whereas similar direction is conspicuously absent in the case of the petitioner. Therefore, I do not find any merit in this writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P. NO. 8250 OF 2000

J U D G M E N T

DATED: 19-09-2007